

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION**

CECIL MADLOCK, #837243

§

VS.

§

CIVIL ACTION NO. 6:05cv142

DIRECTOR, TDCJ-CID

§

ORDER ADOPTING REPORT AND RECOMMENDATION

The Court referred the above-entitled and numbered civil action to United States Magistrate Judge Harry W. McKee. The Magistrate Judge presented for consideration the Magistrate Judge's Report, containing proposed findings of fact and recommendations for disposition of this case.

The Report recommends dismissing this case as time-barred. The one-year statute of limitations began running when Petitioner's time for seeking a petition for discretionary review with the Texas Court of Criminal Appeals expired, on December 12, 1999. Petitioner filed his first state application on January 25, 2002, after the deadline for the present petition to be filed.

Petitioner filed objections to the Report. Petitioner asserts that when the Texas Court of Criminal Appeals granted him the right to file an out-of-time petition for discretionary review, he was restored to his position on direct appeal as though the statute of limitations had not begun. When the Texas Court of Criminal Appeals grants a federal habeas petitioner the right to file an out-of-time petition for discretionary review, the federal court is not required to restart the running of the AEDPA; rather, the one-year limitations period is tolled until the date the Court of Criminal Appeals declines to grant further relief. *Salinas v. Dretke*, 354 F.3d 425, 430 (5th Cir.

2004), *cert. denied* 541 U.S. 1032.

This Court made a *de novo* review of Petitioner's objections and determined that they lack merit. This Court finds that the Magistrate Judge's conclusions are correct, and adopts them as the Court's findings and conclusions. The Court therefore

ORDERS, ADJUDGES, and DECREES that this action is **DISMISSED WITH PREJUDICE**; and

ORDERS that all motions not previously ruled on are denied.

SIGNED this 10th day of January, 2006.

A handwritten signature in black ink, reading "Michael H. Schneider", written over a horizontal line.

MICHAEL H. SCHNEIDER
UNITED STATES DISTRICT JUDGE